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OFFICE OF PETITIONS

**DECISION DISMISSING PETITION
UNDER 37 C.F.R. §1.137(b)**

In re Application of
Melissa E. Scott, Haim Kedar, Andrew J. Kelly, David
E. Huber, and Richard B. Mortensen
Application No. 09/828,072
Filed: April 6, 2001
Attorney Docket No. 16528A039800
Title: HIGH-THROUGHPUT SCREENING ASSAYS
BY ENCAPSULATION

This is a decision on the petition filed on June 4, 2002, pursuant to 37 C.F.R. §1.137(b)¹, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed June 4, 2001, which set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on August 5, 2001.

With the instant application, petitioner has filed the petition, fee, made the correct statement required by 37 C.F.R. §1.137(b)(3), filed a Request for Continued Examination (RCE), and filed the fee associated with the filing of an RCE.

37 C.F.R. §1.114(a) clearly states that a request for continued examination may be made only if prosecution in an application is closed. As prosecution is still open, the filing of an RCE is improper. The fee associated with this filing has not been charged to applicant's deposit account.

¹ A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Furthermore, it is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay². In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.



Paul Shanoski
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Frank P. Grassler
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² See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).